

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Respondent/Plaintiff,

vs.

CARLOS JAVIER LOPEZ,

Petitioner/Defendant.

Case No.: 2:04-cr-0375-RLH-GWF-1

**ORDER**

(Motion to Vacate – #162)

Before the Court is Petitioner/Defendant Carlos Javier Lopez’s (“Lopez”) **Motion for 28 U.S.C. § 2255(a) Relief Based Upon Johnson v. United States, 135 S.Ct. 2251 (2015)** (“Motion”) filed on June 30, 2016 (#162). Lopez requests that “full briefings and dispositions of this claim be stayed until January 7, 2017, or until further motion by the parties.”

Lopez filed a previous Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#133, filed Jan. 5, 2009), which the Court considered on the merits and denied on all grounds (#119). When an initial motion pursuant to 28 § 2255 has been adjudicated on the merits, a “second or successive” motion under the statute must be certified by the court of appeals before it may be filed. 28 U.S.C. § 2255(h); *see also* 9th Cir. R. 22-3(a).

Lopez has not sought and obtained permission from the Court of Appeals for the Ninth Circuit (“Circuit Court”) prior to filing this Motion. This Court therefore may not consider the merits

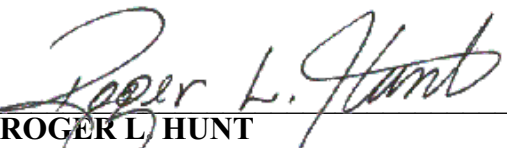
1 of Lopez's Motion. However, the Court will grant Lopez's request to stay the proceedings so he may  
2 seek authorization from the Circuit Court to file a second or successive 28 U.S.C. § 2255 motion. *See*  
3 First Am. General Order 2015-03 (D. Nev. Apr. 27, 2015); 9th Cir. R. 22-3(a).

4 Lopez additionally requests that the Court consider his Motion to be "timely filed as  
5 of the below signed date [June 23, 2016]" without providing any information as to when the Motion  
6 was actually placed in the prison mail system. Although Lopez's Motion was received and filed by  
7 the Clerk's Office on June 30, 2012, which is several days after the one-year deadline for motions  
8 brought pursuant to *Johnson v. United States*, 135 S.Ct. 2551 (2015), the Court anticipates that  
9 Lopez's Motion is subject to the prison mailbox rule. Under the circumstances here, the Court finds  
10 that any timeliness issue would be more appropriately addressed by the Circuit Court.

11 Accordingly, and for good cause appearing,

12 IT IS HEREBY ORDERED Petitioner/Defendant Carlos Javier Lopez's Motion for  
13 28 U.S.C. § 2255(a) Relief Based on *Johnson v. United States*, 135 S.Ct. 2251 (2015) (#162) is stayed  
14 to permit him to seek authorization to file a second or successive 28 U.S.C. § 2255 motion from the  
15 Circuit Court.

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17 Dated: July 11, 2016

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20 **ROGER L. HUNT**  
21 **UNITED STATES DISTRICT JUDGE**  
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